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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,124	04/23/2007	Harry J. Klee	UF-386CXC1	5548

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SALIWANCHIK LLOYD & SALIWANCHIK  
A PROFESSIONAL ASSOCIATION  
PO Box 142950  
GAINESVILLE, FL 32614

EXAMINER
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KALLIS, RUSSELL

ART UNIT	PAPER NUMBER
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1638

NOTIFICATION DATE	DELIVERY MODE
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02/02/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

euspto@slspatents.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,124	<b>Applicant(s)</b> KLEE ET AL.	
	<b>Examiner</b> RUSSELL KALLIS	<b>Art Unit</b> 1638	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 14, 18, 34-36, 47, 58 and 68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-10, 14, 18, 34-36, 47, 58 and 68 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4, drawn to an isolated polynucleotide of SEQ ID NO: 1 encoding a 2-phenylethanol dehydrogenase of SEQ ID NO: 2.

Group II, claim(s) 1,5-7, drawn to an isolated polynucleotide of SEQ ID NO: 10 encoding a 2-phenylethanol dehydrogenase of SEQ ID NO: 11.

Group III, claim(s) 8-10, and 14 drawn to an isolated polynucleotide of SEQ ID NO: 4 encoding a phenylalanine decarboxylase of SEQ ID NO: 5.

Group IV, claim(s) 8-10, and 14 drawn to an isolated polynucleotide of SEQ ID NO: 6 encoding a phenylalanine decarboxylase of SEQ ID NO: 7.

Group V, claim(s) 8-10, and 14 drawn to an isolated polynucleotide of SEQ ID NO: 8 encoding a phenylalanine decarboxylase of SEQ ID NO: 9.

Group VI, claim(s) 8-10, and 14 drawn to an isolated polynucleotide of SEQ ID NO: 12 encoding a phenylalanine decarboxylase of SEQ ID NO: 13.

Group VII, claim(s) 18, 34-36, 47 and 58 drawn to an expression construct comprising an polynucleotide sequence encoding a 2-phenylethanol dehydrogenase, cells and plants transformed therewith and methods thereof.

Group VIII, claim(s) 18, 34-36, 47 and 58 drawn to an expression construct comprising an polynucleotide sequence encoding a phenylalanine decarboxylase, cells and plants transformed therewith and methods thereof.

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Group IX, claim(s) 18, 34-36, 47 and 58 drawn to an expression construct comprising an polynucleotide sequence encoding a phenylalanine decarboxylase and a 2-phenylethanol dehydrogenase, cells and plants transformed therewith and methods thereof.

Group X, claim(s) 68, drawn to an isolated enzyme having 2-phenylethanol dehydrogenase activity.

Group XI, claim(s) 68, drawn to an isolated enzyme having phenylalanine decarboxylase activity.

The inventions listed as Groups I-XI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the technical feature of a phenylacetaldehyde reductase was taught in the art; Wang J. *et al.* in Biosci. Biotechnol. Biochem. 1999 Vol. 63, No. 12: pp. 2216-2218 teach an isolated polynucleotide encoding a phenylacetaldehyde reductase that belongs to a family of alcohol dehydrogenases (see abstract).

Further, pursuant to 37 CFR 1.475(d), the ISA/US considers that where multiple products and processes are claimed, the main invention shall consist of the first invention of the category first mentioned in the claims and the first recited invention of each of the other categories related thereto. Accordingly, the main invention (Group I) comprises the first recited product, an isolated nucleic acid fragment encoding a 2-phenylethanol dehydrogenase or a phenylacetaldehyde reductase. Further pursuant to 37 CFR 1.475(d), the ISA/US considers that any feature which the subsequently recited products and methods share with the main invention does not constitute a special technical feature within the meaning of PCT Rule 13.2 and that each of such products and methods accordingly defines a separate invention.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to RUSSELL KALLIS whose telephone number is (571)272-0798. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Russell Kallis/  
Primary Examiner, Art Unit 1638  
January 26, 2010